IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Reportable: YES/NO Of Interest to other Judges: YES/NO Circulate to Magistrates: YES/NO

Application number: 3805/2022

In the matter between:

KOPANO UITKYK FARMING ENTERPRISE (PTY) LTD
(Registration No: 2013/108341/07) Applicant

and

THE NATIONAL GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
(Through its Department of Agriculture, Land Reform and Rural Development, previously known known as the Department of Rural Development and Land Reform) 1st Respondent

MINISTER OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT 2nd Respondent

MEC: FREE STATE DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT 3rd Respondent

CHIEF DIRECTOR/ACTING CHIEF DIRECTOR: DEPARTMENT AGRICULTURE AND RURAL DEVELOPMENT 4th Respondent

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MACHABEDI DINAH KOMETSI NO (In her capacity as trustee of Kopano Uitkyk No.2 Trust, IT 000071/2015(B))	5th Respondent
PHATEDI JOHANNES MOKONE NO (In his capacity as trustee of Kopano Uitkyk No.2 Trust, IT 000071/2015(B))	6th Respondent
PHAKELA BEN MAPHAKISA NO (In his capacity as trustee of Kopano Uitkyk No.2 Trust, IT 000071/2015(B))	7th Respondent
NAMEDI FRANS MELATO NO (In his capacity as trustee of Kopano Uitkyk No.2 Trust, IT 000071/2015(B))	8th Respondent
TEBELLO JOHANNES MOTSOANI NO (In his capacity as trustee of Kopano Uitkyk No.2 Trust, IT 000071/2015(B))	9th Respondent

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CORAM: VAN ZYL, J

HEARD ON: 26 AUGUST 2022

DELIVERED ON: 16 MARCH 2023

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[1] The main application between the applicant and the first to fourth respondents served before me on the basis of it being an urgent interdictory application.

[2] At the same time an urgent interlocutory application to intervene served before me, with the fifth and sixth respondents as the duly authorised applicants on behalf of the fifth to ninth respondents and the applicant and the first to fourth respondents as the respondents.

[3] I will refer to the parties as in the main application as cited in the heading of this judgment.

Succinct background:

[4] The applicant is seeking urgent relief which, in terms of the notice of motion, entails, *inter alia,* that the first to fourth respondents, pending the finalisation of the action under case number 1993/2022, be "*interdicted from (i) evicting the applicant, from (ii) interfering with the possession exercised by the applicant over, and (iii) interfering with the possession exercised by the applicant in the running of its commercial farming enterprises over, the immovable properties, in the district of Parys in the Free State, being…*" the 18 farms listed in the notice of motion.

[5] The first respondent (referred to in the papers as "the DALRRD") is the owner of the aforesaid 18 farms ("the DALRRD farms"), which it bought during March 2013 from multiple sellers, including amongst others, the Louis Claassen Family Trust.

[6] During 2013 the then National Land Allocation and Recapitalisation Control Committee approved the acquisition of the DALRRD farms in terms of section 10(1)(a) of the Land Reform: Provision of Land & Assistance Act, 126 of 1993 for the sum of R45 000 000.00. Approval was also given in terms of section 10(1)(b)(iii) of the Act for the acquisition of various movable and biological assets ("the movable assets") for the sum of R45 000 000.00. Pursuant to the approval, the erstwhile Department of Rural Development and Land Reform, now the

DALRRD, concluded a purchase agreement for the sale of the DALRRD farms and the movable assets with the LH Claassen Family Trust, Louis Claassen Family Trust and Expectra 322 (Pty) Ltd in March 2013.

[7] There are four main role-players which emanated from the aforesaid acquisition of the DALRRD farms and the events subsequent thereto. These entities are the following:

1. The DALRRD, on its own, but also in conjunction with the other respondents.

2. The applicant ("the Company"). The present directors of the Company are Mr Lethoba, who is also the deponent to the founding affidavit, and Mr Louis Hendrik Claassen (snr).

3. The Louis Claassen Family Trust ("the LCF Trust"). The present trustees of the LCF Trust are Mr LH Claassen (snr), Mr SH Olivier, Mr LH Claassen (jnr) and Mr DK Claassen.

4. The Kopano Uitkyk No. 2 Trust, IT 000071/2015(B) ("the Kopano Uitkyk Trust"). The present trustees of the Kopano Uitkyk Trust are Ms MD Kometsi, Mr PJ Mokone, Mr PB Maphakisa, Mr NF Melato and Mr TJ Motsoani.

<u>The Company's version:</u>

[8] According to the Company the DALRRD and the LCF Trust concluded a partly written, partly oral agreement to the benefit of a third party,

being the Company, during or about March to May 2014 ("the *Stipulatio Alteri*"). The material express, alternatively implied, further alternatively tacit terms of the *Stipulatio Alteri* were, *inter alia,* the following according to the Company:

1. The Company would have the right to the use and enjoyment over the DALRRD farms, including making use as needed of the farming equipment on the DALRRD farms and over the immovable properties made available by the LCF Trust (the LCF Trust farms). The Company would also have the the right to take the profits generated from the commercial farming enterprise conducted on the DALRRD farms and the LCF Trust farms, consisting primarily of a cash crop of maize, sunflowers and soya, as well as to manage the value of the herd of cattle on the DALRRD farms and the LCF Trust farms, which entitled the Company to take the increase in the value of the original number of cattle, and the increase in original number of cattle, on the said farms for itself.

2. The Company, being the joint venture vehicle, would have shareholding of 40% by the LCF Trust, being the strategic partner with commercial farming experience/know-how and availability to funding, and 60% by the beneficiary chosen by the DALRRD, being black emerging commercial farmers, to whom the DALRRD farms would be leased from time to time.

3. Profit made by the Company would be distributed to the shareholders, being the joint venture parties according to the percentage shareholding.

4. The duration of the right granted to the Company over the DALRRD farms and the LCF Trust farms would subsist for the duration of the lease granted to the beneficiary chosen from time to time by the DALRRD, but for not less than five years.

[9] According to the applicant the benefit under the *Stipulatio Alteri* is an interest in land in the form of a *usufruct* in favour of the Company. The Company accepted the benefit of the *Stipulatio Alteri* by conducting such commercial farming enterprise on the DALRRD farms and on the LCF Trust farms from date of the *Stipulatio Alteri* onwards. The DALRRD was aware at all times of such acceptance in that it monitored implementation of the commercial farming enterprise.

[10] At all material times the DALRRD was acting in terms of its powers and obligations in terms of the Land Reform and Assistance Act, read with the relevant policies, by developing the labour tenants/farmworkers of PORTION 1 FARM UITKYK NO. 146 (part of the DALRRD farms) into black commercial farmers with the ability to eventually become owners of such farmland. Mr Lethoba forms part of the said labour tenants/farmworkers. This development of the labour tenants/farmworkers has been taking place with the support, both financially and in respect of commercial farming skills, of the LCF Trust, being the strategic partner chosen by the DALRRD.

[11] Since the acceptance of the *Stipulatio Alteri* by the Company in 2014, Mr Lethoba has been and continuous to be farm manager of the commercial farming enterprise. During the same period Mr Lethoba was also chosen by the labour tenants to be the caretaker of the farm Uitkyk on their behalf.

[12] During or about January 2015 the DALRRD registered the Kopano Uitkyk Trust, being the chosen beneficiary by the DALRRD. The labour tenants of the farm Uitkyk were the beneficiaries of the Kopano Uitkyk Trust. The DALRRD at the time informed the trustees of the Kopano Uitkyk Trust that it would be the chosen beneficiary in the Company.

[13] On 30 August 2017 the Kopano Uitkyk Trust passed an unanimous resolution to enter as the chosen beneficiary into the Company as a shareholder with the LCF Trust, on the terms as set out by the DALRRD and the LCF Trust in the *Stipulatio Alteri.* The Company therefore tendered such 40% shareholding to the LCF Trust and 60% shareholding to the Kopano Uitkyk Trust.

[14] The aforesaid *Stipulatio Alteri* was orally amended on or about 12 November 2022 during a meeting between the DALRRD and the LCF Trust as to the duration of the right granted to the Company over the DALRRD farms and the LCF Trust farms. According to the *Amended Stipulatio Alteri* the said right would subsist for the duration of the lease granted to the beneficiary chosen from time to time by the DALRRD, but 1for not less than a period of 30 years.

[15] The Company accepted the benefit of the *Amended Stipulatio Alteri,* which acceptance the DALRRD was aware of. All the trustees of the Kopano Uitkyk Trust at the time, as well as the beneficiaries thereof, also attended the said meeting and consequently also had notice of the *Amended Stipulatio Alteri* and the acceptance thereof by the Company.

[16] At the said meeting the LCF Trust and the Kopano Uitkyk Trust also orally agreed on the terms of the Shareholders Agreement, which Shareholders Agreement was to be drafted by the attorney for the Company and after signature by the Kopano Uitkyk Trust of the Agricultural Lease referred to hereinafter, the parties would sign such Shareholders Agreement.

[17] On or about 27 November 2020 the Kopano Uitkyk Trust and the DALRRD entered into a written Agricultural Agreement of Lease for a period of 30 years, with an option to renew for a further 20 years, pertaining to the DALRRD farms. At the time of entering into the Agricultural Lease, the DALRRD and the Kopano Uitkyk Trust were aware of the pre-existing rights of the Company in terms of the *Amended Stipulatio Alteri*, as accepted, to conduct the commercial farming enterprise on the DALRRD farms and the LCF Trust farms, including making use of the farming equipment as needed and managing the livestock. The rights of the DALRRD and/or the Kopano Uitkyk Trust pertaining to the DALRRD farms, farm equipment and livestock are consequently limited to the extent of the rights previously granted to and accepted by the Company.

[18] The Shareholders Agreement was subsequently drafted by the attorney for the Company and the LCF Trust provided same to the Kopano Uitkyk Trust during or about February 2021 for signature. The Kopano Uitkyk Trust has, however, failed to sign the agreement.

[19] The Company continuous to tender the 60% shareholding to the Kopano Uitkyk Trust, as set out in the Shareholders Agreement, and as

intended by the DALRRD and the LCF Trust initially when entering into the *Stipulatio Alteri*, and as later amended.

[20] During early 2021 an internal disagreement arose between the trustees of the Kopano Uitkyk Trust, in that Ms Kometsi (supported by Mr Mokone) who was not participating in commercial farming anymore by that time, sought to cease the rights of the Company for herself, alternatively for the Kopano Uitkyk Trust. Ms Kometsi issued an urgent application for a declaratory order under case number 818/2021 to be heard on 3 March 2021. On the said date an order was made by agreement between the parties to the effect that Ms Kometsi withdrew the application and that the parties agreed to a meeting between all stakeholders on 16 March 2021.

[21] The aforesaid meeting was eventually held on 20 April 2021 between the attorney of record for the various plaintiffs in the action to which I will refer hereinlater, a representative for the DALRRD and Jam Jam Attorneys, being the attorneys who represented Ms Kometsi and Mr Mokone. Further negotiations also took place thereafter. It was agreed at the said meeting between all the parties that the Company, as managed by Mr Lethoba, would continue with all farming activities during such process.

[22] During several subsequent meetings it was accepted and confirmed by all parties that the commercial farming enterprise, comprising the DALRRD farms and the LCF Trust farms, including the farming equipment, are in the peaceful and undisturbed possession of the Company as managed by Mr Lethoba.

[23] On 1 and 2 September 2021 Jam Jam Attorneys, together with Ms Kometsi and Mr Mokone, apparently on behalf of the Kopano Uitkyk Trust, together with other parties, proceeded to dispossess the Company and Mr Lethoba of the possession of the commercial farming enterprise. On 7 September 2021 the Company and the other plaintiffs in the action approached the court on an urgent basis under case number 4076/2021 for an order to restore possession and cease interference with the rights exercised by the Company and Mr Lethoba. On 8 September 2021 the court granted an order as requested and restored possession to the Company and Mr Lethoba over 12 of the DLARRD farms and three of the LCF Trust farms and ordered, amongst others, Ms Kometsi, Mr Mokone and Jam Jam Attorneys to cease interfering with the possession of the Company and Mr Lethoba.

[24] On 11 January 2022 Ms Kometsi and Mr Mokone, on behalf of the Kopano Uitkyk Trust, issued action proceedings under case number 55/2022, in which claims are made by them to the profit of the Company pertaining to the commercial farming enterprise, including the management of the livestock, against either the Company or the LCF Trust or both ("the Kometsi action"). According to the Company the court will be requested to consolidate the two actions to be heard together.

[25] On 28 April 2022 the Company, as first plaintiff, instituted action under case number 1993/2022, where, amongst other claims, it claims for the enforcement of the *Amended Stipulatio Alteri*.

First to fourth respondents' version:

[26] In the answering affidavit it is admitted that the DALRRD held discussions with the LCF Trust with the intention of concluding a JV Agreement between Kopano Uitkyk Trust and the LCF Trust. It is, however, denied that the discussions led to the conclusion of any agreement between the Kopano Uitkyk Trust and the LCF Trust. According to the DALRRD the Kopano Uitkyk Trust does not want to enter into a business relationship with the LCF Trust and the DALRRD has no power to compel the Kopano Uitkyk Trust to enter into a JV Agreement with the LCF Trust.

[27] The Company and the LCF Trust have no legal right to be in possession of the farms. The DALRRD is the owner of the farms and has signed a 30-year lease agreement with the Kopano Uitkyk Trust. The Kopano Uitkyk Trust is the party which has a right in the form of a lease agreement.

Application to intervene:

[28] The *prima facie* right on which the Company is relying for purposes of the *interim* interdictory relief, is set out in its founding affidavit as follows:

"76. The Company in terms of a court order issued ... in September 2021 where third parties sought to spoliate the Company – and to which the respondents were parties but chose not to oppose – in case number 4076/2021 ..., was found to be 7in lawful and undisturbed possession of the commercial farming properties, on which the commercial farming enterprise was conducted. ...

In any event, at that stage the DALRRD, and other respondents, did not attempt to interfere with the possession or rights as exercised by the Company. It was only thereafter that these threats in the letters attached above emanated from the respondents. ...

77. The Company has already instituted action ... under case number 1993/2022, where amongst other claims, it claims for the enforcement of the *Amended Stipulatio Alteri* in terms whereof the Company was granted, and accepted by conduct, *inter alia,* the right to the use and enjoyment over the immovable properties of the DALRRD. ... All these issues will only be finally determined by the court hearing the action. For the purposes of this interim interdict, the Company has shown the relevant right."

[29] As correctly pointed out in the founding affidavit in the application to intervene, the Company made substantive allegations in its founding affidavit in relation to the Kopano Uitkyk Trust in relation to, *inter alia,* its alleged notice and acceptance of the *Amended Stipulatio Alteri,* its alleged agreement as to the format of the Shareholders Agreement of the Company, the Kopano Uitkyk Trust's alleged knowledge of the alleged pre-existing rights of the Company in terms of the *Amended Stipulatio Alteri* when it concluded the Agricultural Lease Agreement and the alleged acceptance by the Kopano Uitkyk Trust that the commercial farming enterprise, comprising the DALRRD farms (and equipment) and the LCF Trust farms, as well as the cattle, are in the peaceful and undisturbed possession of the Company.

[30] It is evident that the Company is heavily relying on the aforesaid allegations for purposes of its alleged *prima facie* right for purposes of the interdictory relief.

[31] Despite the aforesaid material allegations against and in relation to the Kopano Uitkyk Trust, the Company failed to cite the Kopano Uitkyk Trust as a party to the proceedings. This must especially be considered against the background that it is not in dispute that the Kopano Uitkyk Trust is a lessee of the relevant DALRRD farms in terms of the Agricultural Lease Agreement. The Kopano Uitkyk Trust is relying on the said lease agreement and alleges that in terms thereof the Trust is the entity which is entitled to the control of the farm and the farming activities, as well as all the movable assets on the farm.

[32] Furthermore, the mere fact that the court found in September 2021 that the Company was in peaceful and undisturbed possession of the relevant farms, does not necessarily mean that that was still the factual position at the time when the Company instituted the present application.

[33] The Kopano Uitkyk Trust is clearly an entity which has a direct and substantial interest in the present dispute between the parties. The Kopano Uitkyk Trust is also a party to the two actions which are currently pending between the relevant parties, pertaining to the very same subject matter.

[34] The Kopano Uitkyk Trust was also a party to some of the correspondence attached to the founding affidavit which the Company is relying upon in support of the urgent relief it is seeking in the present application. In fact, certain undertakings were even requested from the Kopano Uitkyk Trust in the final letter of demand, annexure "F19", which was sent on behalf of the Company before it launched the urgent application.

[35] It is therefore in my view evident that the Kopano Uitkyk Trust has a direct and substantial interest in the interdictory relief being sought against the first to fourth respondents.

[36] I am consequently convinced that the applicant should have cited the Kopano Uitkyk Trust (its trustees) in the application as respondents, which it failed to do.

[37] With regard to the urgency of the application to intervene, the Kopano Uitkyk Trust clearly had no other option but to have brought the application on an urgent basis in order to be adjudicated simultaneously with the main application. Condonation is therefore to be granted in this regard.

[38] The Kopano Uitkyk Trust (the trustees) are therefore entitled to intervene and to be joined as respondents. All the parties were *ad idem* that should I grant the application for leave to intervene, all the trustees of the Kopano Uitkyk Trust are to be joined as respondents and not only the first and second intervening applicants.

[39] With regard to the costs of the application to intervene, Mr Meijers, on behalf of the Company, submitted that should the application to intervene be granted, the costs thereof are to be costs in the main application. I cannot agree with this contention. The Company had a duty to have cited the Kopano Uitkyk Trust (its trustees) as respondents in the main application, which it failed to do. It is the Company`s failure in this regard which necessitated the Kopano Uitkyk Trust to bring the application for leave to intervene. The Company then went even further and opposed the application for leave to intervene.

[40] In my view the Company consequently only has itself to blame for the costs of the application for leave to intervene and should therefore be ordered to pay same.

[41] I will deal with the request for costs of two counsel later in the judgment.

Kopano Uitkyk Trust's version:

[42] The trustees confirm that they concluded a lease agreement with the DALRRD for a term of 30 years in terms whereof they are to take over the operations of the farms and the lease agreement furthermore vests them with all movable assets on the farms, including cattle, equipment and implements.

[43] The trustees deny the conclusion of a *Stipulatio Alteri* as alleged by the Company and deny that they concluded any agreement with the LCF Trust.

***In limine*: *Locus standi* and Urgency:**

[44] Both the DALLRD and the Kopano Uitkyk Trust raised the point that the application is not urgent; alternatively, that the alleged urgency is self-created.

[45] The DALLRD also raised the point that the Company does not have the necessary *locus standi* to have launched the application.

[46] I deem it apposite to deal with the aforesaid two points simultaneously since they are, in my view, entwined in the relevant circumstances of this application.

[47] The legal position with regard to the requirements for urgency is well-known. Rule 6(12) deals with urgent applications and Rule 6(12)(b) explicitly sets out the requirements for purposes of an urgent application:

"In every affidavit filed in support of any application under paragraph (a) of this subrule, the applicant must set forth explicitly the circumstances which is [*sic*] averred render [*sic*] the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at the hearing in due course."

[48] In **East Rock Trading 7 (Pty) Ltd & Another v Eagle Valley Granite (Pty) Ltd & Others** (11/33767) [2011] ZAGPJHC 196 (23 September 2011) at paras [6] – [9] the court dealt with the aforesaid requirements:

"[6] The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the Applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course. The rules allow the court to come to the assistance of a litigant because if the latter were to wait for the normal course laid down by the rules it will not obtain substantial redress.

[7] It is important to note that the rules require absence of substantial redress. This is not equivalent to the irreparable harm that is required before the granting of an interim relief. It is something less. He may still obtain redress in an application in

due course but it may not be substantial. Whether an applicant will not be able to obtain substantial redress in an application in due course will be determined by the facts of each case. An applicant must make out his cases in that regard.

[8] In my view the delay in instituting proceedings is not, on its own a ground, for refusing to regard the matter as urgent. A court is obliged to consider the circumstances of the case and the explanation given. The important issue is whether, despite the delay, the applicant can or cannot be afforded substantial redress at a hearing in due course. A delay might be an indication that the matter is not as urgent as the applicant would want the Court to believe. On the other hand a delay may have been caused by the fact that the Applicant was attempting to settle the matter or collect more facts with regard thereto.

[9] It means that if there is some delay in instituting the proceedings an Applicant has to explain the reasons for the delay and why despite the delay he claims that he cannot be afforded substantial redress at a hearing in due course. I must also mention that the fact the Applicant wants to have the matter resolved urgently does not render the matter urgent. The correct and the crucial test is whether, if the matter were to follow its normal course as laid down by the rules, an Applicant will be afforded substantial redress. If he cannot be afforded substantial redress at a hearing in due course, then the matter qualifies to be enrolled and heard as an urgent application. If however despite the anxiety of an Applicant he can be afforded a substantial redress in an application in due course the application does not qualify to be enrolled and heard as an urgent application." (Own emphasis)

[49] The correspondence which is attached to the Company`s founding affidavit is to be considered in conjunction with the averments in the affidavit itself, since the Company places reliance on the correspondence for purposes of the urgency of the application.

[50] In paragraph 60 of the founding affidavit, the company alleges as follows:

"On 1 February 2022 the DALRRD gave notice to the Company to vacate the DALRRD farms. Such notice to vacate is attached ... hereto as Annexure "F11".

[51] The said letter was indeed addressed to the Company, with the heading *"Notice to vacate the farms Uitkyk and others: Fezile Dabi District"*. The letter reads as follows:

"After careful consideration of your relationship with Kopano Uitkyk No. 2 coupled with the outcome of a series of meetings that have been held thus far with both parties, this Office has come to the conclusion that the relationship between the parties is irreparable and that the Department wishes to bring to your attention the aspirations and wishes of Kopano Uitkyk No. 2 to continue with the farming operations independent of you.

The Department wishes to stress that the farms Uitkyk and others as per the existing Lease Agreement known to you, have been officially allocated to Kopano Uitkyk No. 2 inclusive of both the loose assets (Mechanization, implements and livestock as at the effective date of the Lease Agreement).

...

We trust that this is in order and that you will cooperate with the Lessees of the subject matter farms."

[52] Although the heading of the letter indicates that it is a *"notice to vacate the farms Uitkyk and others"*, I agree with the contention on behalf of the DALLRD that it cannot be regarded as threatening eviction against the Company. It also does not contain any date in terms of which the Company would be expected to vacate the farms. In my view it is evident that the Company itself did not consider it to have been a

threatening eviction against the Company either, considering that it did not respond to it on an urgent basis.

[53] The Company`s attorney of first instance, Uys Attorneys, responded with a letter dated 25 March 2022, attached to the founding affidavit as annexure "F12". The letter was addressed not only on behalf of the Company, but also on behalf of the LCF Trust and Mr Lethoba. According to the Company, in paragraph 61 of the founding affidavit, the said letter set out *"the relevant facts pertaining to the Amended Stipulatio Alteri above, and stating that the plaintiffs in the action, and in particular the Company, would enforce their rights"*. From a reading of the letter it is evident that the contents thereof are basically the same as what is set out in the founding affidavit up to the point where reference is made to the action which was issued by the Kopano Uitkyk Trust on 11 January 2022. I deem it necessary to point out that in the said letter the following was also alleged:

"5.37 The right of the JV to continue to conduct the commercial farming enterprise has been continually threatened by Kometsi and Mokone, apparently acting on behalf of the Kopano Uitkyk No. 2 Trust, as well as by their attorney of record, that is causing irreparable harm to the JV, as it will not be able to continue to conduct the commercial farming enterprise upon materialization of the threats."

[54] The letter was ended with the following paragraph:

"Therefore, we hold instructions to enforce our clients` rights and to oppose any and/or all legal processes instituted by any party which may have the effect of limiting and/or deter from our clients' rights."

[55] In response the DALLRD addressed a letter on 30 March 2022 to Uys Attorneys, representing the Company, the trustees of the LCF Trust and Mr Lethoba, which letter is attached to the founding affidavit as annexure “F13”. In the said letter the DALLRD denied that it entered into a *Stipulatio Alteri* for the benefit of the Company, nor did it grant an *usufruct* in favour of the Joint Venture. In paragraphs 7 and 8 of the letter the following was stated:

> “7. The FS PSSC kindly request again that the Claassen Family Trust accept that the lawful lessees of the farm, Kopano Uitkyk No. 2 Trust, no longer wishes to conduct farming activities with the Claassen Family Trust.
>
> 8. The FS PSSC further requests that the Claassen Family Trust enter into negotiations with the Department regarding when the farms will be vacated. Failure to adhere to this request will force the FS PSSC to approach the High Court for an eviction order.”

[56] The aforesaid letter did not trigger any legal action from the Company, the CLR Trust or Mr Lethoba. From a proper reading of the letter it is evident that in so far as possible eviction is concerned, it was clearly mentioned in relation to the CLF Trust and not the Company. Furthermore, the letter did not reflect any unlawful intention on the part of the DALRRD, since it was clearly stated that if necessary, the court will be approached for an order of eviction.

[57] On 24 May 2022 the DALRRD addressed a letter to the LCF Trust with the heading “NOTICE TO VACATE THE FARMS UITKYK AND OTHERS…”. The letter, attached to the founding affidavit as annexure “F15”, reads as follows:

"Following the recent developments in the case, it is becoming clear that the Claassen Family Trust will not vacate the farm willingly. It is our intention that the Claassen Family Trust vacate the farm at the end of the current harvesting season.

The Claassen Family Trust is therefore required to vacate the farm at the end of August 2022.

Should you fail to adhere to this instruction, the Department of Agriculture, Land Reform and Rural Development will have no choice but to institute eviction proceedings against the Claassen Family Trust."

[58] It is evident that the letter of 24 May 2022 triggered the present application and forms the basis of the Company`s urgent application. However, as pertinently pointed out in the answering affidavit, the said letter was addressed to the LCF Trust and it is the LCF trust who was given notice to vacate at the end of August 2022, failing which the DALLRD was of the intention to bring an eviction application. The letter was not addressed to the Company.

[59] The LCF Trust and the Company are two separate legal entities, as also admitted by the Company in its replying affidavit. The Company therefore cannot by the following mere allegation as contained in paragraph 66 of the founding affidavit substitute the one entity with the other:

"The letter in all the circumstances was clearly directed at the Company, and the Respondents merely chose to adopt the nomenclature of the name of one of the shareholders of the Company, so as to disguise its true intent of evicting the Company at the end of August 2022 from the DALRRD Farms."

[60] In my view one of the implications of the fact that the letter with the notice to vacate contained therein was addressed to the LCF Trust and not to the Company, is that the Company cannot rely on the 24 May 2022 letter for purposes of the alleged urgency of the application with reference to the end of August 2022. The Company is not the entity who was notified to vacate by the end of August 2022.

[61] Even if I am to be wrong in my last-mentioned finding and it is to be accepted that the Company can place reliance on the 24 May 2022 letter, the contents of the letter did not entitle the Company to have approached court on an urgent basis. I have already indicated that for purposes of an urgent application an applicant must make out a case why it claims that it cannot afforded substantial redress at a hearing in due course. In the 24 may 2022 letter it was pertinently indicated that should the farms not be vacated by the end of August 2022, the DALRRD would institute eviction proceedings. There was no indication from the DALRRD that it was planning on taking the law into its hands by evicting any entity without due legal process. Therefore, the Company would have been able to obtain substantial redress in due course if it had waited for the DALRRD to launch legal proceedings to evict the Company from the farms. It then would have had ample time to oppose such an application and to even file a counter application for whatever relief it considered necessary.

[62] The Company seems to also rely on the following allegations in the founding affidavit for purposes of urgency, especially with regard to the relief sought in addition to the eviction-interdict:

"72. Acting on the above information that such settlement negotiations were either unauthorised or were now denied, as well as information received from employees of the Company during the last week of July 2022, pertaining to actions of intimidation against such employees by certain of the trustees and beneficiaries of the Kopano Uitkyk No. 2 Trusts stating to them that they would be unemployed by the end of August and would have to get off of the DALRRD Farms – which only could have been at the behest of the Respondents – the attorney of record of the Company on 29 July 2022 send a letter to the State Attorney..."

[63] Not only do the aforesaid allegations constitute hearsay evidence, but once again the Company is attempting to hold a separate legal entity responsible for the conduct by or on behalf of a different separate entity, by means of a bald, unsubstantiated statement that the actions of certain of the trustees and beneficiaries of the Kopano Uitkyk Trust occurred on the behest of the DALLRD.

[64] In the replying affidavit the Company elaborated on the aforesaid hearsay allegations and attached an affidavit deposed to by one of the employees of the Company who confirms that he and other employees of the Company who are not beneficiaries of the Kopano Uitkyk Trust were informed during a meeting held on 2 July 2022 that, inter alia, Kopano Uitkyk Trust and another entity will take over the farms on 1 September 2022, where after the deponent and the other employees of the Company will no longer be employed on the farm and will not be allowed on the farm and those who reside on the farm, will have to move away. However, it is evident from the said affidavit that the trustees of the Kopano Uitkyk Trust called the meeting and the trustees advised the Company`s employees accordingly. There is no indication in the said affidavit that any representative of the DALRRD was present and/or that the meeting was held on instructions of the DALRRD. It can

consequently not be relied upon for purposes of urgency of its case against the DALRRD.

Conclusion:

[65] In the circumstances I am of the view that the applicant failed to make out a proper case with regard to the alleged urgency of the application. The application consequently stands to be removed from the roll.

[66] Considering my finding with regard to the lack of urgency, I do not consider it necessary to determine the issue of *locus standi.*

Costs:

[67] With regard to the costs of the main application, there is no reason why costs should not follow the outcome.

[68] Mr Meijers submitted that costs of two counsel are not justified in an application for an interim interdict. I cannot agree with his submission. One can not only consider the nature of the relief being sought, but also the complexity of the matter and the volume of the application. In this particular instance I am also mindful of the fact that the respondents were compelled to draft their respective papers within truncated time periods.

[69] In the circumstances I am justified that the employ of two counsel both in the application to intervene and in the main application, was fair and justified.

Order:

[70] The following order is consequently made:

1. In the application to intervene, condonation is granted in terms of prayer 1 of the notice of motion.

2. The application to intervene is granted and the following parties are joined as follows to the main application in their capacity as trustees of the Kopano Uitkyk No. 2 Trust, IT 000071/2015(B):
   2.1 Machabedi Dinah Kometsi NO as the 5^{th} respondent;
   2.2 Phatedi Johannes Mokone NO as the 6^{th} respondent;
   2.3 Phakela Ben Maphakisa NO as the 7^{th} respondent;
   2.4 Namedi Frans Melato NO as the 8^{th} respondent; and
   2.5 Tebello Johannes Motsoani NO as the 9^{th} respondent.

3. The costs of the application to intervene are to be paid by the applicant in the main application, including the costs of two counsel.

4. The main application is removed from the roll.

5. The costs of the main application are to be paid by the applicant in the main application, including the costs of two counsel.

[redacted]

C. VAN ZYL, J

On behalf of the applicant: Adv. GV Meijers
Instructed by:
McIntyre Van der Post Attorneys
BLOEMFONTEIN

On behalf of the $1^{st} - 4^{th}$ respondents: Adv. TD Seneke
Assisted by:
Adv. AS Boonzaaier
Instructed by:
Office of the State Attorney
BLOEMFONTEIN

On behalf of the $5^{th} - 9^{th}$ respondents: Adv. M Ramaili SC
Assisted by:
Adv. K Molefe
Instructed by:
Rampai Attorneys
BLOEMFONTEIN